SENATE, No. 51

STATE OF NEW JERSEY

217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

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SYNOPSIS
Restricts use of isolated confinement in correctional facilities.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning restrictions on isolated confinement in correctional facilities and supplementing Title 30 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the “Isolated Confinement Restriction Act.”

2. The Legislature finds and declares that:
   a. The use of isolated confinement in this State’s correctional facilities should be restricted to ensure the safe and humane operation of these facilities, consistent with the New Jersey Constitution, the laws and public policies of this State, the mission of the correctional system, evolving medical knowledge, and human rights standards of decency.
   b. Isolated confinement should only be used when necessary, and should not be used against vulnerable populations or under conditions or for time periods that foster psychological trauma, psychiatric disorders, or serious, long-term damage to an isolated person’s brain.
   c. The standards established in this act should apply to all persons detained in correctional facilities under the jurisdiction of this State or any subdivision, regardless of the civil or criminal nature of the charges against them.

3. For the purposes of this act:
   “Clinician” means a State licensed physician, except if the clinician makes mental health evaluations, the term shall mean a State licensed psychiatrist or psychologist, or an advanced practice nurse or clinical nurse specialist with a specialty in psychiatric nursing.
   “Commissioner” means the Commissioner of Corrections.
   “Correctional facility” means any State correctional facility or county correctional facility, and any State, county, or private facility detaining persons pursuant to any intergovernmental service agreement or other contract with any State, county, or federal agency, including, but not limited to, United States Immigration and Customs Enforcement.
   "County correctional facility" means a county jail, penitentiary, prison, or workhouse.
   “Emergency confinement” means the isolated confinement of an inmate in a correctional facility when there is reasonable cause to believe that this confinement is necessary for reducing a substantial risk of imminent serious harm to the inmate or others.
“Facility administrator” or “administrator” means the chief operating officer or senior administrative designee of a correctional facility.

“Inmate” means a person confined in a correctional facility.

“Isolated confinement” means confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day, with severely restricted activity, movement, and social interaction.

“Less restrictive intervention” means a placement or conditions of confinement, or both, in the current or an alternative correctional facility, under conditions less restrictive of an inmate’s movement, privileges, activities, or social interactions.

“Medical isolation” means isolated confinement of an inmate for medical reasons, including a mental health emergency or when necessary for preventing the spread of a communicable disease.

“Member of a vulnerable population” means any inmate who:

a. is 21 years of age or younger;

b. is 55 years of age or older;

c. has a disability based on a mental illness, as defined in subsection r. of section 2 of P.L.1987, c.116 (C.30:4-27.2), a history of psychiatric hospitalization, or has recently exhibited conduct, including but not limited to serious self mutilation, indicating the need for further observation or evaluation to determine the presence of mental illness;

d. has a developmental disability, as defined in subsection b. of section 3 of P.L.1985, c.145 (C.30:6D-25);

e. has a serious medical condition which cannot effectively be treated in isolated confinement;

f. is pregnant; or

g. has a significant auditory or visual impairment.

“Protective custody” means confinement of an inmate in a cell or similarly confined holding or living space, under conditions necessary to protect the inmate or others.

"State correctional facility" means a State prison or other penal institution or an institution or facility designated by the commissioner as a place of confinement under section 2 of P.L.1969, c.22. (C.30:4-91.2)

4. a. The use of isolated confinement in correctional facilities in this State shall be restricted as follows:

(1) Except as otherwise provided in paragraphs (1), (3), and (4) of subsection d. of this section, an inmate shall not be placed in isolated confinement unless there is reasonable cause to believe that the inmate would create a substantial risk of immediate serious harm to himself or another, and a less restrictive intervention would be insufficient to reduce this risk. Except as otherwise provided in
paragraphs (1), (3), and (4) of subsection d. of this section, the
correctional facility shall bear the burden of establishing this
standard.
(2) Except as otherwise provided in paragraphs (1), (3), and (4)
of subsection d. of this section, an inmate shall not be placed in
isolated confinement for non-disciplinary reasons.
(3) Except as otherwise provided in paragraph (1) of subsection
d. of this section, an inmate shall not be placed in isolated
confinement before receiving a personal and comprehensive
medical and mental health examination conducted by a clinician.
(4) Except as otherwise provided in paragraph (1) of subsection
d. of this section, an inmate shall only be held in isolated
confinement pursuant to initial procedures and reviews which
provide timely, fair and meaningful opportunities for the inmate to
contest the confinement. These procedures shall include the right to
an initial hearing within 72 hours of placement and a review every
15 days thereafter, in the absence of exceptional circumstances,
unavoidable delays, or reasonable postponements; the right to
appear at the hearing, the right to be represented at the hearing, an
independent hearing officer, and a written statement of reasons for
the decision made at the hearing.
(5) Except as otherwise provided in paragraph (3) of subsection
d. of this section, the final decision to place an inmate in isolated
confinement shall be made by the facility administrator.
(6) Except as otherwise provided in paragraph (7) of subsection
a. of this section and paragraph (3) of subsection d. of this section,
an inmate shall not be placed or retained in isolated confinement if
the facility administrator determines that the inmate no longer
meets the standard for the confinement.
(7) A clinician shall evaluate each inmate placed in isolated
confinement on a daily basis to determine whether the inmate is a
member of a vulnerable population. Except as otherwise provided
in subsection d. of this section, an inmate determined to be a
member of a vulnerable population shall be immediately removed
from isolated confinement and moved to an appropriate placement.
(8) A disciplinary sanction of isolated confinement which has
been imposed on an inmate who is removed from isolated
confinement pursuant to paragraph (7) of subsection a. of this
section shall be deemed to be satisfied.
(9) Except as otherwise provided in paragraph (1) of subsection
d. of this section during a facility-wide lock down, an inmate shall
not be placed in isolated confinement for more than 15 consecutive
days, or for more than 20 days during any 60-day period.
(10) Cells or other holding or living space used for isolated
confinement are to be properly ventilated, lit, temperature-
controlled, clean, and equipped with properly functioning sanitary
fixtures.
b. Except as otherwise provided in subsection d. of this section, an inmate who is a member of a vulnerable population shall not be placed in isolated confinement.

   (1) A person who is a member of a vulnerable population because the person is 21 years of age or younger, has a disability based on mental illness, or has a developmental disability:

      (a) shall not be subject to discipline for refusing treatment or medication, or for self-harming or related conduct or threats of this conduct; and

      (b) who would otherwise be placed in isolated confinement shall alternately be placed in a specialized unit, as designated by the commissioner, or be civilly admitted or committed to an appropriate facility designated by the Department of Human Services.

   (2) A person who is a member of a vulnerable population because the person is 55 years of age or older, has a serious medical condition which cannot be effectively treated in isolated confinement, or is pregnant who would otherwise be placed in isolated confinement shall alternately be placed in an appropriate medical or other unit, as designated by the commissioner.

   c. An inmate shall not be placed in isolated confinement or in any other cell or other holding or living space, in any facility, with one or more inmates if there is reasonable cause to believe that there is a risk of harm or harassment, intimidation, extortion, or other physical or emotional abuse to that inmate or another inmate in that placement.

   d. Isolated confinement shall be permitted under limited circumstances as follows:

      (1) The facility administrator determines that a facility-wide lockdown is required to ensure the safety of inmates in the facility until the administrator determines that these circumstances no longer exist. The facility administrator shall document specific reasons why any lockdown is necessary for more than 24 hours, and why less restrictive interventions are insufficient to accomplish the facility's safety goals. Within six hours of a decision to extend a lockdown beyond 24 hours, the commissioner shall publish the reasons on the Department of Corrections website and provide meaningful notice of the reasons for the lockdown to the Legislature.

      (2) The facility administrator determines that an inmate should be placed in emergency confinement.

         (a) An inmate shall not be held in emergency confinement for more than 24 hours; and

         (b) An inmate held in emergency confinement shall receive an initial medical and mental health evaluation within two hours, and a personal and comprehensive medical and mental health evaluation within 24 hours. Reports of these evaluations shall be immediately provided to the facility administrator.
(3) A physician, based on a personal examination, determines that an inmate should be placed or retained in medical isolation.

The decision to place and retain an inmate in medical isolation due to a mental health emergency shall be made by a clinician based on a personal examination. In any case of isolation under this paragraph, a clinical review shall be conducted at least every six hours and as indicated. An inmate in medical isolation pursuant to this paragraph shall be placed in a mental health unit as designated by the commissioner.

(4) The facility administrator determines that an inmate should be placed in protective custody as follows:

(a) The inmate may be placed in voluntary protective custody only with informed, voluntary, written consent and when there is reasonable cause to believe that confinement is necessary to prevent reasonably foreseeable harm. When an inmate makes an informed voluntary written request for protective custody, the correctional facility shall bear the burden of establishing a basis for refusing the request.

(b) The inmate may be placed in involuntary protective custody only when there is clear and convincing evidence that confinement is necessary to prevent reasonably foreseeable harm and that no less restrictive intervention would be sufficient to prevent such harm.

(c) An inmate placed in protective custody shall receive comparable opportunities for activities, movement, and social interaction, consistent with their safety and the safety of others, as are inmates in the general population of the facility.

(d) An inmate subject to removal from protective custody shall be provided with a timely, fair, and meaningful opportunity to contest the removal.

(e) An inmate who may be placed or currently is in voluntary protective custody may opt out of that status by providing informed, voluntary, written refusal of that status.

(5) A member of a vulnerable population shall not be placed in isolated confinement with one or more inmates, except with the inmate’s informed, voluntary, written consent.

5. Within 90 days of the effective date of this act, the commissioner shall:

a. develop policies and implement procedures for the review of inmates placed in isolated confinement and submit proposed regulations for promulgation as required by section 6 of this act;

b. initiate a review of each inmate placed in isolated confinement pursuant to the policies and procedures developed and implemented under subsection a. of this section; and

c. develop a plan for providing step-down and transitional units, programs, and staffing patterns to accommodate inmates currently placed in isolated confinement.
6. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the commissioner shall promulgate regulations to effectuate the provisions of this act. The regulations shall include but not be limited to:

a. Establishing less restrictive interventions to isolated confinement, including separation from other inmates; transfer to other correctional facilities; and any non-isolated confinement sanction authorized by Department of Corrections regulations; restrictions on religious, mail, and telephone privileges, visit contacts, or outdoor and recreation access shall only be imposed as is necessary for the safety of the inmate or others, but shall not restrict access to food, basic necessities, or legal access;

b. Requiring training of disciplinary staff and all staff working with inmates in isolated confinement and requiring that this training include:

   (1) assistance from appropriate professionals in the Department of Human Services to periodically train all staff working with inmates in isolated confinement; and

   (2) standards for isolated confinement, the identification of developmental disabilities, and the symptoms of mental illness, including trauma disorders, and methods of safe responses to people in distress;

c. Requiring documentation of all decisions, procedures, and reviews of inmates placed in isolated confinement;

d. Requiring monitoring of compliance with all rules governing cells, units, and other places where inmates are placed in isolated confinement; and

e. Requiring posting on the official website of the Department of Corrections of quarterly reports on the use of isolated confinement, by age, sex, gender identity, ethnicity, incidence of mental illness, and type of confinement status, at each facility; these reports shall include the population on the last day of each quarter and a non-duplicative cumulative count of people exposed to isolated confinement for each fiscal year. These inmate reports also shall include the incidence of emergency confinement, self-harm, suicide, and assault in any isolated confinement unit, as well as explanations for each instance of facility-wide lockdown. These reports shall not include personally identifiable information regarding any inmate.

7. This act shall take effect on the first day of the thirteenth month next following enactment, except the commissioner may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.
This bill restricts the use of isolated confinement in correctional facilities in New Jersey.

The bill specifically prohibits inmates incarcerated or detained in correctional facilities from being placed in isolated confinement unless there is reasonable cause to believe that the inmate or others would be at risk of serious harm, and any less restrictive intervention would be insufficient to reduce that risk. The correctional facility is responsible for establishing the justification for isolated confinement. Inmates may not be placed in isolated confinement for non-disciplinary reasons. Inmates are required to receive a personal and comprehensive medical and mental health examination, conducted by a clinician, before being placed in isolated confinement.

Under the bill, initial procedures and reviews providing timely, fair, and meaningful opportunities for an inmate to contest the confinement are required to be made available. The procedures are to include the right to an initial hearing within 72 hours of placement and reviews every 15 days thereafter, in the absence of exceptional circumstances, unavoidable delays, or reasonable postponements; the right to appear at the hearing; the right to be represented at the hearing; an independent hearing officer; and a written statement of reasons for the decision made at the hearing.

Except in cases involving medical isolation, the final decision to place an inmate in isolated confinement is to be made by the facility administrator. An inmate is to be removed from isolated confinement if the administrator determines that the inmate no longer meets the standard for isolated confinement.

A clinician is required to evaluate each inmate placed in isolated confinement, on a daily basis, to determine whether the inmate is a member of a vulnerable population. An inmate determined to be a member of a vulnerable population shall be immediately removed from isolated confinement to an appropriate placement. Under the bill, an inmate is a member of a vulnerable population if he or she is 21 years of age or younger; is 55 years of age or older; has a disability based on a mental illness, a history of psychiatric hospitalization, or has recently exhibited conduct, including but not limited to serious self-mutilation, indicating the need for further observation or evaluation to determine the presence of mental illness; has a developmental disability; has a serious medical condition which cannot effectively be treated in isolated confinement; is pregnant; or has a significant visual or auditory impairment.

No inmate is to be placed in isolated confinement for more than 15 consecutive days, or for more than 20 days during any 60-day period under the bill. Cells or other holding or living spaces used for isolated confinement are to be properly ventilated, lit,
temperature-controlled, clean, and equipped with properly functioning sanitary fixtures.

The bill defines isolated confinement as “confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day with severely restricted activity, movement, and social interaction.”

The bill provides for certain exceptions to the restrictions on isolated confinement for facility-wide lock downs, emergency confinement, medical isolation, and protective custody.